



CITY OF ROANOKE
OFFICE OF THE CITY MANAGER

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March 21, 2005

Honorable C. Nelson Harris, Mayor
Honorable Beverly T. Fitzpatrick, Jr., Vice Mayor
Honorable M. Rupert Cutler, Council Member
Honorable Alfred T. Dowe, Jr., Council Member
Honorable Sherman P. Lea, Council Member
Honorable Brenda L. McDaniel, Council Member
Honorable Brian J. Wishneff, Council Member

Dear Mayor Harris and Members of Council:

Subject: Extending lease of Alexander-
Gish House

Background:

The original lease of the Alexander-Gish House at 641 Walnut Avenue by Old Southwest Neighborhood Alliance was authorized by Ordinance No. 24929 on December 10, 1979. On May 11, 1981, the City Manager executed a lease assignment, transferring the lease to Old Southwest Neighborhood Foundation, Incorporated. Old Southwest, Incorporated has leased this location since December 10, 1979. The current lease agreement expired December 31, 2004.

Old Southwest, Incorporated has requested an extension of the current lease agreement with similar terms and conditions. The previous lease had a five (5) year term at an annual lease rate of \$1.00. The proposed extension agreement is for an additional five year period, beginning January 1, 2005, through December 31, 2009 at an annual lease rate of \$1.00. The extension agreement may be further extended for an additional five-year term on the same terms upon the mutual agreement of both parties.

Recommended Action:

Authorize the City Manager to execute a lease extension agreement with Old Southwest, Inc. for the Alexander-Gish House located at 641 Walnut Avenue, S.W., Roanoke, Virginia for a period of five years, beginning January 1, 2005 and expiring December 31, 2009, with an additional five-year term, on the same terms, if agreed to by both parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darlene L. Burcham". The signature is fluid and cursive, with the first name "Darlene" being more prominent than the last name "Burcham".

Darlene L. Burcham
City Manager

DLB:lpp

c: Mary F. Parker, City Clerk
William M. Hackworth, City Attorney
Jesse A. Hall, Director of Finance
Dana Long, Manager of Billings and Collections
Brian Townsend, Acting Director of Economic Development
Sherman Stovall, Director of Management and Budget
David Collins, Assistant City Attorney

CM05-00031

THIS LEASE made and entered this 3rd day of May, 1985, between the CITY OF ROANOKE, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia, hereinafter referred to as the "City", and the OLD SOUTHWEST NEIGHBORHOOD FOUNDATION, INC., a non-profit organization organized and existing under the laws of the Commonwealth of Virginia, hereinafter referred to as the "Foundation",

W I T N E S S E T H:

1. That in consideration of the rent provided for herein and the covenants and agreements set forth below, the City does hereby lease to the Foundation that structure known as the James Alexander House, 633 Walnut Avenue, S.W., located in Highland Park, in the City, together with its outbuildings, which leased premises are more particularly shown on a plan marked "Exhibit A", attached hereto and made a part of this lease.

2. The term of this lease shall be for five (5) years, commencing on January 1, 1985 and terminating on December 31, 1989.

3. During the term of this lease, the Foundation shall pay to the City as rent the sum of \$1.00 per year, payable in advance to the Office of Billings and Collections, Room 120, Courthouse, P.O. Box 2199, Roanoke, Virginia 24009.

4. During the term of this lease, the Foundation shall continue to develop a plan for the restoration of the leased structure, and subject to the approval of the City Manager of the plan, the Foundation shall continue to implement this plan. Any such restoration shall be effected in such a manner as to preserve and protect the historic character of the structure. No alterations may be made to the exterior structure without the prior written authorization of the City Manager and review by the Roanoke City Architectural Review Board.

5. Any and all improvements made to the lease premises by the Foundation shall become the property of the City upon the expiration of this lease, or any subsequent extension thereof.

EXTENSION AGREEMENT

THIS EXTENSION AGREEMENT ("Extension Agreement") is entered into as of the 1st day of _____, 2005.

WHEREAS, by Lease and Agreement dated December 22, 1989 (the "Lease"), the **CITY OF ROANOKE** ("City" and "Lessor") and **OLD SOUTHWEST, INC.** ("Lessee"), agreed to the lease of a certain structure known as the James Alexander House (also known as the Alexander-Gish House), 641 Walnut Avenue, S.W., located in Highland Park, together with its outbuildings and parking lot area (the "Leased Premises"), as well as other terms and provisions, a copy of which Lease is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the Lease expired as of December 31, 1994, and was renewed by an Extension Agreement dated January 19, 1995, for an additional five-year term; and

WHEREAS, the 1995 Lease Extension Agreement expired as of December 31, 1999, and was renewed by an Extension Agreement dated January 1, 2000, for an additional five-year term;

WHEREAS, the 2000 Lease Extension Agreement expired as of December 31, 2004; and

WHEREAS, both the City and the Lessee desire to extend the Lease for an additional five-year term from January 1, 2005, through December 31, 2009, with an option to renew such Lease for an additional five year-year term upon the mutual agreement of both parties, upon certain terms and conditions; and

WHEREAS, Roanoke City Council has authorized execution of an Extension

Agreement by the appropriate City officials by Ordinance No. _____, dated _____, _____;

THEREFORE, IN CONSIDERATION of the above premises, and other good and valuable consideration, the receipt of which is hereby acknowledged, City and Lessee hereby mutually agree as follows:

1. The Lease, subject to the terms and conditions contained herein, is hereby extended for an additional five-year term from January 1, 2005, through December 31, 2009. This Extension Agreement may be further extended for an additional five-year term upon the mutual agreement of both parties.

2. Lessee, for and during the term of this Extension Agreement, shall pay rent to City for the use and occupancy of the Leased Premises at an annual lease rate of \$1.00 per year, payable in advance to the Office of Billings and Collections, Room 252, 215 Church Avenue, S.W., Roanoke, Va. 24011-1529.

3. The Lessee shall maintain and operate the Leased Premises strictly in accordance with all applicable federal, state and local environmental protection laws, regulations, rules and orders, including but not limited to those laws relating to the storage, disposal and presence of Hazardous Substances (the term "Hazardous Substances" used herein has the same meaning as given that term and to the term "hazardous wastes" in 42 U.C.C. §9601), disposal of solid waste, release or emission of pollutants or Hazardous Substances into the air or soil or into groundwater or other

waters, and erosion and sedimentation control (collectively, "Environmental Law"). The Lessee covenants that it has either acquired heretofore or shall acquire, prior to or at the time required by applicable law, all environmental permits and licenses required by any Environmental Law in connection with the maintenance and operation of the Lessee's business upon the Leased Premises.

4. The Lessee shall indemnify, defend and hold the Lessor, its successors, assigns, directors, officers, employees, volunteers, agents and lenders harmless from all response costs, damages, expenses, claims, fines and penalties incurred by the Lessor, its successors, assigns, directors, officers, employees, volunteers, agents and lenders as the result of any violation by the Lessee of any Environmental Law, or as the result of any necessary repair, cleanup, closure or detoxification of the Leased Premises or upon land in the vicinity of the Leased Premises if due to conditions existing upon the Leased Premises or as a result of a misrepresentation made by the Lessor based upon information supplied by the Lessee to the Lessor. The provisions in this section shall survive the termination of this Extension Agreement.

5. The Lessee shall grant and give to the Lessor, its agents and employees the right and license to enter the Leased Premises, without notice, at any reasonable time to inspect the Leased Premises or to conduct a reasonable environmental investigation, including but not limited to an environmental assessment or audit of the Leased Premises to satisfy the Lessor that the Leased Premises are free from environmental

contaminations and hazards. The Lessor may employ engineers to conduct such investigations on the Lessor's behalf, and the Lessee shall give to such engineers the same rights and licenses as the Lessor may have pursuant to this section. The Lessee shall from time to time and upon the request of the Lessor, give to the Lessor or to whomever the Lessor may designate such assurances as may be necessary to show that the Lessee is in compliance with any and all Environmental Laws. The Lessor shall use its best efforts to minimize interference with the Lessee's business but shall not be liable for any interference or harm caused by the Lessor's exercise of its rights under this section. If any environmental contamination be found, after conducting any such environmental investigation as required herein, the cost of such investigation and audit, in addition to all costs required to comply with any Environmental Law and to conduct necessary cleanup, shall be borne by the Lessee, bear interest at the annual rate of eighteen percent (18%) and be payable as additional rent to the Lessee immediately upon written demand thereof.

6. The Lessee shall disclose to the Lessor at the Commencement Date of this Extension Agreement, and on January 1 of each year thereafter (all such dates being hereinafter called "Disclosure Dates"), including January 1 of the year after the termination of this Extension Agreement, the names and amounts of all Hazardous Substances, which were stored, used or disposed of at the Leased Premises, or which the Lessee intends to store, use or dispose of at the Leased Premises, for the year prior to and after each Disclosure Date. The Lessor, in its sole and absolute discretion, may consent

or decline to consent to the Lessee's storage or use, or both, of any Hazardous Substance, provided that (i) the Lessee shall store such matter in leakproof containers, (ii) such storage and use does not constitute a violation of any Environmental Law, and (iii) the Lessee shall use such matter in accordance with all Environmental Laws.

7. Lessee agrees that it will protect, indemnify and save harmless the City from the claims of all persons arising as the result of the activities of Lessee, its members, employees, and agents, in the Leased Premises and on the accompanying grounds, and that it will secure, maintain, pay for and keep in force, until the expiration of this Extension Agreement, commercial general liability insurance written on an occurrence basis with a limit of no less than \$1,000,000 (one million dollars). Lessee shall name the City, its officials, officers, employees, agents and volunteers as additional insureds on said policy, and shall provide the City with a copy of the certificate of insurance prior to January 31 of each year of this Extension Agreement.

8. Except as changed or modified herein, the conditions, terms and obligations of the Lease Agreement, and any extensions thereof, remain in full force and effect as if fully stated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Extension Agreement as of the day and year first hereinabove written.

ATTEST:

CITY OF ROANOKE

By _____

Date: _____

ATTEST:

OLD SOUTHWEST, INC.

By _____
_____ (title)

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney